
(1999) 09 GAU CK 0011

In the Gauhati High Court

Case No : W.A. No's. 65 of 1995 and 26 of 1996

Santosh Kumar Bhowmik and Another

APPELLANT

Vs

O.N.G.C. and Another

RESPONDENT

Date of Decision : 28-09-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 1 GLT 104 : (2000) 2 LLJ 161

Hon'ble Judges : P.C. Phukan, J;H.K. Sema, J

Bench : Division Bench

Advocate : B. Das, A. Bhattacharjee and N. Muzumdar, for the Appellant; S. Deb and R. Das Gupta, for the Respondent

Final Decision : Allowed

Judgement

P.C. Phukan, J.—Shri Santhosh Kumar Bhowmik is a time keeper in Tripura Project of the Oil and Natural Gas Commission (ONGC in short) a Statutory Body created under the Oil and Natural Gas Commission Act, 1956. On conclusion of the disciplinary proceedings, Shri Bhowmik was found guilty of misconduct and was awarded the penalty of stoppage of two increments with cumulative effect by the Disciplinary Authority, Project Manager, ONGC vide order dated January 15, 1983 (Annexure-A/10 to the writ petition). The Appellate Authority, General Manager, ONGC dismissed his Appeal vide order dated May 25/28, 1983 (Annexure-A/16 to the writ petition).

2. On being moved, this Court by an order dated August 8, 1986 (Annexure-A/17 to the writ petition) in C.R. No. 81/1983 quashed the order dismissing the Appeal holding the same to be a non- speaking order and sent back the matter to the Appellate Authority for disposal afresh in accordance with law.

3. The Appellate Authority (this time the Regional Director, ONGC as the post of General Manager was abolished in the meantime) on fresh disposal of the Appeal maintained the finding of the guilt, but reduced the penalty of stoppage of two

increments with cumulative effect to one of stoppage of two increments without cumulative effect. Shri S.K. Bhowmik still felt aggrieved and approached this Court for the second time in C.R. No. 143/86. The learned single Judge did not interfere with the finding of guilt but quashed the punishment "holding it to be harsh and highly disproportionate" and remitted "the matter to the authority to impose any other lighter punishment" vide judgment and order dated November 22, 1995.

4. Shri Bhowmik, the petitioner in the Civil Rule, preferred the W. A. No. 65 of 1995 against the above judgment and order in its entirety. The ONGC and others, the respondents in the Civil Rule, preferred the W.A. No. 26 of 1996 against the said judgment and order so far as it relates to the quashing of the penalty and remand of the matter to the Appellate Authority to impose any other lighter punishment.

5. While admitting the W.A. No. 26 of 1996, this Court by an order dated April 23, 1996 directed that it would be heard with the earlier W.A. No. 65 of 1995 arising out of the same judgment and order dated November 22, 1995 passed by the learned single Judge in C.R. No. 143/86. Both the writ Appeals, therefore, were heard analogously and are being disposed of by this common judgment and order.

6. We have considered the records and heard Mr. B. Das learned Sr. Counsel assisted by Mr. A. Bhattacharjee and Mr. N. Majumdar, learned Counsel for Shri S.K. Bhowmik (Appellant in W.A. No. 65 of 1995 and respondent in W.A. No. 26 of 1996) as well as Mr. S. Deb, learned Sr. Counsel assisted by Mr. R. Dasgupta, learned Counsel for ONGC and others (Respondents in W.A. No. 65 of 1995 and Appellants in W.A. No. 26 of 1996).

7. The entire statement of allegations against Shri Santosh Kumar Bhowmik, findings of the Inquiry Officer thereon, the relevant portion of the Memo dated January 15, 1983 of the disciplinary authority imposing punishment, and the operative portions of the orders of the Appellate Authority before and after the remand passed on May 25/28, 1983 and October 25, 1986 respectively are reproduced below not only as ready reference but also to facilitate better appreciation of facts of the case;

Statement of allegation

"On November 18, 1980 at about 15.15 hours when Shri G.K.N. Murthy, Dy. Director (TPT) was talking with Dy. Director (F & A), in his chamber for finalisation of arrangement for the transportation of Bunk Houses from Agartala to Calcutta and for bringing well head easy and other drilling items from Calcutta to Rokhia Shri S.K. Bhowmik, Time keeper abused Shri G.N.K. Murthy, Dy. Director (TPT) over telephone by using some filthy words.

At about 15.45 hours on the same day he assembled with large numbers of officials in the transport yard and shouted and used very filthy and

unparliamentary languages.

Further at 16.25 hours on the same day while Shri Murthy, Dy, Director (TPT) was going after closing his office room to his residence when Shri J. Mahanto, M.V.D. and Shri Ratan Das, Store Keeper Gd-II (incharge Petrol Pump) also met Shri Murthy and they were also moving with him. Shri Bhowmik, Time keeper shouted and said "Hey Murthy you stop there", and he came running towards him in front of control room and asked why he had issued a Memo. He also prevented Shri Murthy physically from proceeding further. While Shri Murthy was trying to free himself from his clutches Shri Bowmik hit Shri Murthy on his right chin and right arm and further prevented Shri Murthy from proceeding further, Shri M. Mahanto, M.V.D. caught Shri Bhowmik and pushed him aside. Shri S.K. Bhowmik, Time Keeper while on duty has misbehaved and manhandled a senior officer and also threatened for dire consequences of Shri Murthy's life and had behaved indecently inside the office premises. All these acts on the part of Shri Bhowmik tantamount to misconduct and thus render him liable for disciplinary action under the ONGC (CDA) Regulations 1976."

Findings of the inquiry officer dated September 30, 1982:

"The scope of the enquiry was restricted to the specific charges stated in the "Statement of allegations" and listed out in the article of charges.

(i) The alleged telephone talks:

The only witness available, Shri M.S. Mathur from whose room Shri G.N.K. Murthy had the telephone talk, was examined. He could testify to the extent of loud exchange of talk, but failed to identify the person at the other end of the line by voice. So the charge is not conclusively proved.

(ii) Collection of large number of people in the Transport yard and use of the filthy and unparliamentary language:

This particular charge was framed on the basis of the information received by Shri G.N.K. Murthy in the chamber of Shri M.S. Mathur from Shri S.K. Bose, AG-I, of transport section. On examining the witness very closely on this point, he completely disowned the fact and stated that he had met Shri Murthy regarding his own official work. In absence of any other witness, this charge, also cannot be established beyond any reasonable doubt.

(iii) Alleged scuffle:

This charge consists of several ingredients and each ingredient was examined as thoroughly as possible:

S/Shri J. Mahanto, MVD and Ratan Das, SK. GD-II were present, when Shri Murthy was proceeding to his residence after closing his office, and they are material witnesses.

As regards the use of the words "Hey Murthy you stop there", which were

allegedly used by Shri Bhowmik, no witness has testified. But uniformly every witness has, testified that Shri Bhowmik came to Shri Murthy with a paper in his hand and demanded of Shri Murthy as to why he had given him the memo. This fact has been clearly admitted by Shri Bhowmik. A certified copy of the Memo has been detailed by the undersigned from the defence counsel is placed on record.

As regards the charge that Shri Bhowmik prevented Shri Murthy from proceeding further, it can be said that it is only incidental, because the picture that emerges is, one person is on the move and the other person instantly meeting some explanation, so the retardation in the speed of the moving persons is inevitable. A physical prevention of movement has not been testified by any witness.

Witnesses have testified that exchange of words took place between S/Shri Murthy and Bhowmik and this exchange developed into the alleged scuffle. As per the testimony Shri Murthy became excited and applied physical force on Shri Bhowmik. Also it is on testimony that persons present on the spot, physically took away S/Shri Murthy as well as Bhowmik, apprehending any escalation.

From the above, certain facts become evident. A scuffle definitely took place in the Transport yard on November 18, 1980 after the close of the office hours between S/Shri Murthy and Bhowmik on the question of the issue of a memo.

(iv) Observations

This Memo was scrutinised very carefully and found that it did not contain anything derogatory or in excess of the administrative powers of DD (TPT), the Sectional Head. The Memo was purely an administrative one and should not have been taken by the recipient as a cause for engineering avoidable situations, as the scope and. purpose of the Memo was limited."

Memorandum of the disciplinary authority dated January 15, 1983:

"From the findings of the Inquiry Officer it is clear that Shri Bhowmik took the Memo issued to him by Shri G.N.K. Murthy, Dy Director (TPT) when the latter was walking near the petrol pump, had shouted at Shri Murthy as to why he was given a memo and further provoked by preventing Shri Murthy to proceed further. This provocation has further resulted in exchange of words.

The undersigned, therefore, has come to conclusion that Shri Bhowmik is thus guilty of indecent behaviour within the office premises and of preventing his superior officer from doing his normal work. In view of this the undersigned awards Shri Bhowmik the penalty of stoppage of two increments with cumulative effect in the pay scale of Rs. 430-12-490- 15-580-20-780-25-880/-. The stoppage of increments is two stages of increments in whatever pay scale is applicable from time to time."

Order of the appellate authority dated May 25/28, 1983

"After going through the disciplinary proceedings, defence statement, enquiry

report etc. the undersigned has come to the conclusion that the penalty of stoppage of two increments with cumulative effect imposed on him by the Dy. General Manager (T-C) vide his office order No. AGT/27/199/D&A dated January 15, 1983 is just minimum to meet the ends of justice. Accordingly the appeal submitted by him is hereby turned down."

Order of the appellate authority dated October 25, 1986:

"And whereas Shri S.K. Bhowmik, Time Keeper preferred an appeal in the Hon"ble High Court of Gauhati and the Hon"ble High Court has quashed the General Manager's order dated May 25/28, 1983 on the ground that the General Manager has not given reasons to support the order of the disciplinary authority, and the appeal was sent back to General Manager for fresh hearing in accordance with law.

And whereas the undersigned has reconsidered the appeal of Shri S.K. Bhowmik, Time Keeper and record that:

- 1) A memo was issued to Shri S.K. Bhowmik, Time Keeper by his superior officer which was neither defamatory nor derogatory.
- 2) Upon receiving the Memo Shri Bhowmik created an ugly scene and prevented his superior officer from doing his duty and " questioned him as to why he had issued the Memo. Shri Bhowmik is found guilty of indecent behaviour within the office premises and of preventing his superior officer from doing his normal work.
- 3) During the course of entire proceedings of the enquiry Shri Bhowmik could not prove his innocence.

Now therefore taking a lenient view the punishment of stoppage of two increments with cumulative effect imposed by Dy. General Manager (T-C), ONGC, Agartala. vide Order No. AGT/27/199/D & A/80 date.d January 15, 1983 is reduced to stoppage of two increments without cumulative effect."

8. It is pertinent to note that before submission of the above mentioned enquiry report dated September 30, 1982, the same Inquiry Officer earlier submitted an Inquiry Report dated April 17, 1982 that "no objection provided Shri S.K. Bhowmik, Time Keeper (US) is exonerated from the charge in question." (Annexure-A/9 to the writ petition). This Inquiry Report was submitted on April 17, 1982 after Shri G.N.K. Murthy, who was] allegedly misbehaved by Shri Bhowmik, made the following statement on the same day "at the very outset I feel that the case need not be pursued further" (Annexure-A/9 to the writ petition).

9. The Disciplinary Authority, however, did not accept the aforesaid inquiry report dated April 17, 1982 exonerating Shri Bhowmik from the service and instead directed further inquiry by the same Inquiry Officer. In the subsequent Inquiry Report dated September 30, 1982 also the Inquiry Officer found that:

"1) There was no evidence to prove that on November 18, 1980 at 15.15 hours

in the Office Chamber of Shri Murthy it was Shri Bhowmik at the other end of the line using abusive languages over phone;

2) There was no evidence to prove that on the same day at 15.45 hours Shri Bhowmik assembled a large number of officers in the Transport Yard and shouted filthy languages;

3) There was no evidence to prove that on the same day at 16.25 hours in front of the control room, Shri Bhowmik shouted "Hey Murthy you stop there."

4) There was no evidence to prove that on the aforesaid date, time and place, Shri Bhowmik physically prevented Shri Murthy from proceeding further, and

5) There Was no evidence to prove that Shri Bhowmik hit Shri Murthy on his chin and right arm. On the contrary the Inquiry Officer categorically stated, "As per the testimony Shri Murthy became excited and applied physical force on Shri Bhowmik."

10. All that the Inquiry Officer found was that "A scuffle definitely took place in the Transport Yard on November 18, 1980 after close of the Office hours between Shri Murthy and Shri Bhowmik on the question of the issue of a Memo" and "Shri Bhowmik came to Shri Murthy with a paper in his hand and demanded of Shri Murthy as to why he had given him the Memo." It is clear from the Inquiry Officer's Report itself that in the scuffle it was Shri Murthy who applied physical force on Shri Bhowmik and not vice versa, and hence, Shri Bhowmik cannot be blamed in this regard. And by no stretch of imagination it can be said that the act of Shri Bhowmik asking Shri Murthy why he issued the Memo constitutes misconduct under the Oil and Natural Gas Commission (Conduct, Discipline and Appeal) Regulations, 1976. Even assuming that such act constitutes misconduct, Shri Murthy himself did not depose before the Inquiry Officer that Shri Bhowmik asked him why he issued the Memo. In any view of the matter, it is a clear case of no evidence to support any of the allegations made against Shri Bhowmik. That being so, the Disciplinary Authority could not have imposed on him the penalty of stoppage of two increments with cumulative effect, the Appellate Authority could not have dismissed his appeal, and the Appellate Authority after remand by this Court could not have dismissed the Appeal again and imposed on Shri Bhowmik the penalty of stoppage of two increments without cumulative effect observing, inter alia, that "during the course of entire proceedings of the enquiry, Shri Bhowmik could not prove his innocence." Such observation reveals the colossal ignorance of the Appellate Authority that the onus of proof lies on the party making the allegations and not on the person against whom the allegations are made.

11. It is true that findings of facts reached by Disciplinary Authority or the Appellate Authority cannot be reopened in a proceeding under Article 226 of the Constitution on the ground that the evidence relied upon is insufficient or that the appreciation of evidence is wrong or that some evidence was not duly considered or specifically referred to in its decision. It is, however, settled law

that the High Court can interfere if the finding is based on no evidence as in the instant case. It has been held in *Syed Yakoob Vs. K.S. Radhakrishnan and Others*, that:

"The jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence, which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari".

Similar view has been taken in *The Board of High School and Intermediate Education U.P. Vs. Bagleshwar Prasad and Others*, as under:

"It is common ground that the proceedings taken against the respondent in respect of the unfair means alleged to have been adopted by him at the examination, are in the nature of quasi-judicial proceedings, and as such, in a proper case, orders passed as a result of the said proceedings would be liable to be challenged under Article 226 of the Constitution. It is also common ground that the High Court would be justified in quashing the impugned order if it is satisfied that the said order is not based on any evidence at all. An order passed by a Tribunal holding a quasi-judicial enquiry which is not supported by any evidence, is an order which is erroneous on the face of it and as such, is liable to be quashed by the High Court in exercise of its high prerogative jurisdiction to issue a writ under Article 226."

And, in *Apparel Export Promotion Council Vs. A.K. Chopra*, Apex Court has held that at p. 967:

"16. Once findings of fact, based on appreciation of evidence are recorded, the High Court in Writ jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable."

12. Since it is a clear case of no evidence | to support any of the allegations made against Shri Bhowmik, there is no question of imposing on him any punishment at all. Hence, the impugned order dated November 22, 1995 passed by the learned single Judge remanding the matter to the Appellate Authority to impose on Shri S.K. Bhowmik any lighter punishment cannot be allowed to stand and is set aside.

13. In view of the above, we dismiss the W.A. No. 26 of 1996 preferred by the

ONGC and Ors. against the impugned judgment and order dated November 22, 1995 passed by the learned single Judge so far as such judgment and order relate to quashing of the penalty imposed on Shri Bhowmik and remand of the matter to the Appellate Authority to impose on him any lighter punishment.

14. In the result, the impugned order dated January 15, 1983 passed by the Disciplinary Authority imposing penalty on Shri Bhowmik holding him guilty of misconduct, the order dated October 25, 1986 passed by the Appellate , Authority modifying the penalty imposed on Shri Santosh Kumar Bhowmik based on findings not supported by any evidence are set aside and quashed.

15. The respondents are directed not to withhold promotion of Shri S.K. Bhowmik to a higher post on the ground that he was found guilty of misconduct and was punished which has now been set aside and quashed. If otherwise found fit for promotion, Shri Bhowmik shall be promoted with effect from the date when his promotion was due with consequential benefits.

16. The W.A. No. 65 of 1995 is allowed as indicated above and the W.A. No. 26 of 1996 is dismissed.

17. In the facts and circumstances, the parties are left to bear their own costs.